



August 23, 2011

Chairman Julius Genachowski
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Chairman Genachowski:

We write to express our support for your efforts to modernize the high-cost universal service program and rationalize the intercarrier compensation regime. Achieving this long overdue reform is one of the most important and complex challenges facing the Commission today. We supported most of the key recommendations in the National Broadband Plan for addressing these issues and appreciate the significant commitment you have made to implement those recommendations, as well as the hard work of the Commission staff in carrying out these efforts.

As competitors to incumbent local exchange carriers (LECs) in urban and rural areas throughout the country, cable operators are directly and significantly affected by the Commission's universal service and intercarrier compensation rules. Our customers contribute millions of dollars every month to the Universal Service Fund, we compete directly with LECs that receive roughly \$3 billion annually in high-cost subsidies, and we have endured years of disputes and litigation with carriers that refuse to pay the appropriate intercarrier compensation on traffic we exchange with them.

The National Cable & Telecommunications Association (NCTA) and the American Cable Association (ACA) each plan to file comments in response to the Commission's public

notice seeking comment on incumbent LEC proposals to reform the high-cost support program and the intercarrier compensation regime. We write to you jointly, however, to highlight our shared concern that elements of the incumbent LEC proposals do not satisfy the four key principles that the Commission has established to guide this process.

1) Modernize USF and ICC for Broadband

A modern set of universal service and intercarrier compensation rules should transition away from today's incumbent LEC-centric approach and move toward a regime where there is no artificial advantage associated with incumbency and no disadvantage associated with using a particular technology or network architecture. As you have stated, a "technology-neutral approach is key to putting scarce resources to the best possible use."¹

With respect to high-cost support, competitive and technological neutrality means that support should be awarded to the most efficient provider in a supported area, not simply the one that has been there the longest. In the intercarrier compensation context, these principles mean that companies should receive similar payment for performing similar services, regardless of the equipment used or the network architecture deployed, and they should be provided with similar opportunities to transition to any new regime. For example, an originating provider should be obligated to pay the terminating rate specified by the Commission, regardless of the technology of the terminating network and regardless of whether the traffic is delivered to the called location by the terminating carrier or a partner company (e.g., when a VoIP provider and a competitive LEC partner to deliver service).

The incumbent LEC proposals for high-cost support and intercarrier compensation reform fall short of these principles. For example, the high-cost program for price cap areas that is proposed in the America's Broadband Connectivity (ABC) plan gives wireline incumbent LECs a right of first refusal to receive support, denying alternative providers the opportunity to receive support even where they can serve the area more efficiently and denying consumers the opportunity to receive service from a superior provider. Similarly, significant elements of the intercarrier compensation regime, like the transitional access replacement mechanism, appear to be designed only with incumbent LECs in mind, even though competitive LECs will experience the same access charge reductions.

2) Fiscal Responsibility

The growth in the high-cost fund, and the corresponding burden on consumers, is well-documented. As steward of a federal government program that is funded by American consumers, the Commission bears a special responsibility to ensure that money is spent wisely.

¹ Remarks of Chairman Julius Genachowski on Modernizing and Streamlining the Universal Service Fund (Feb. 7, 2011), at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304489A1.pdf.

As you have stated, “[w]e need to be responsible fiscal stewards, to get the most bang for our USF buck. Particularly in light of its inefficiencies, we need to control the costs of USF.”²

Under your leadership, the Commission consistently has made clear that reform of the high-cost support program and the intercarrier compensation regime should be carried out in a manner that does not increase the overall size of the Universal Service Fund or the burden on American consumers. You have recognized that the key to achieving this objective is to eliminate wasteful and inefficient spending in existing programs and to target new programs only to areas where support is truly needed, such as Tribal areas.

The incumbent LEC proposals purport to be designed to constrain the size of the program, but they are explicitly designed to be temporary. In addition, the proposals include no meaningful mechanism by which the Commission would implement such constraints and actually would permit selected increases in the budget. The Commission can, and should, design any new funding mechanism to operate within an explicit, long-term budget and to prioritize funding consistent with that budget when demand for high-cost support exceeds the budgeted amount. The Commission also should eliminate elements of the proposals that would require more support than necessary, such as the price cap right of first refusal mentioned above or the use of a cost model that ignores the presence of existing wireless broadband services and provides funding based on the cost of wireline networks even where wireless would be more efficient.

3) Accountability

Establishing constraints on the size of the high-cost program is important, but the Commission also must take steps to require greater accountability from companies that receive such support. Any broadband support should be conditioned on clear, enforceable obligations to build and operate networks in supported areas.

Although the ABC plan includes obligations for recipients of funding from the Connect America Fund, the transitional access replacement mechanism includes no such obligations. Rather, it is designed solely to facilitate the ability of carriers to transition their business plans to an environment where intercarrier compensation is a less significant revenue stream. The Commission should be especially wary of providing and careful in administering this sort of funding mechanism because of the heightened potential for wasteful spending. For example, any access replacement mechanism should be limited in size and duration, and eligibility should be limited to smaller carriers and should require a clear demonstration of need.

4) Market-Driven Policies

The Commission has recognized that this proceeding provides an opportunity to use market-driven and incentive-based policies to achieve benefits for all consumers. In the context of high-cost support, for example, competitive bidding should be used to award support to the

² *Id.*

most efficient provider of supported services in a particular area, rather than simply giving it to the provider that has been there the longest. In the intercarrier compensation context, market-driven policies should, among other things, preserve the core pro-competitive framework governing interconnection and traffic exchange among carriers which has enabled competition to flourish.

The incumbent LEC proposals take some steps in the right direction, but fall short in a number of significant ways. For example, the proposal to provide price cap LECs a right of first refusal, rather than distributing support through competitive bidding, is an unwarranted departure from market-driven policies. We also have concerns regarding the ABC proposal to prematurely deregulate tandem switching and transport services that the largest incumbent LECs currently provide to all competitive providers pursuant to regulated tariffs and agreements. The provision of those services on a regulated basis is a critical component of the Section 251 interconnection and traffic exchange regime that has served as the foundation for a competitive voice market. Eliminating regulation would compel competitive providers to pay substantially more for these functions, which is entirely contrary to the basic premise of intercarrier compensation reform. There is no public policy basis for this outcome and consequently this proposal should be rejected.

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We appreciate the contribution to the reform effort that the incumbent LECs have made by developing these proposals. But as the Commission nears the finish line of this process, it must maintain its focus on the larger responsibility it bears to the continued development of a competitive broadband marketplace and a fiscally responsible support regime that does not unduly burden American consumers. Thank you for considering our views on these important issues.

Respectfully submitted,



Matthew M. Polka
President/CEO
American Cable Association



Michael K. Powell
President & CEO
National Cable & Telecommunications
Association